

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
NORTHERN DIVISION  
No. 2:10-CV-29-D

ROC F. SANSOTTA, Trustee  
and Executor for the Estate of  
Father Joseph Klaus, et al.,

Plaintiffs,

v.

TOWN OF NAGS HEAD,

Defendant.

**ORDER**

On April 11, 2012, defendant moved for an award of costs, including attorney's fees under 42 U.S.C. § 1988 [D.E. 140]. Plaintiffs responded in opposition to the request for attorney's fees [D.E. 143], and defendant replied [D.E. 148]. Pursuant to section 1988, "a district court may in its discretion award attorney's fees to a prevailing defendant . . . upon a finding that the plaintiff's action was frivolous, unreasonable, or without foundation." Christiansburg Garment Co. v. EEOC, 434 U.S. 412, 421 (1978); see 42 U.S.C. § 1988; Fox v. Vice, 131 S. Ct. 2205, 2213–16 (2011); Bryant Woods Inn, Inc. v. Howard Cnty., Md., 124 F.3d 597, 606–07 (4th Cir. 1997); Bloch v. Mountain Mission Sch., 846 F.2d 69, 1988 WL 45433, at \*4–5 (4th Cir. 1988) (per curiam) (unpublished table opinion). Having reviewed the record, the court concludes that plaintiffs' action was not frivolous, unreasonable, or without foundation. See, e.g., Bryant Woods Inn, 124 F.3d at 606–07; Bloch, 1988 WL 45433, at \*4–5. Thus, the court declines to award attorney's fees. Nevertheless, the court does award \$5,720.50 for deposition costs. Accordingly, defendant's motion [D.E. 140] is DENIED in part and GRANTED in part.

SO ORDERED. This 25 day of May 2012.

  
JAMES C. DEVER III  
Chief United States District Judge